

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PAUL SIMKUS,)
)
)
Plaintiff,) **No: 13 CV 7921**
)
)
vs.)
)
UNITED AIRLINES, a wholly owned subsidiary of)
UAL CORPORATION,)
)
)
Defendant.) **JURY DEMAND**

PLAINTIFF'S EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PAUL SIMKUS,)
)
)
Plaintiff,) **No: 13 CV 7921**
)
)
vs.)
)
UNITED AIRLINES, a wholly owned subsidiary of)
UAL CORPORATION,)
)
)
Defendant.) **JURY DEMAND**

**FIRST AMENDED COMPLAINT
AS AND FOR A FIRST CAUSE OF ACTION
(DISCRIMINATION UNDER THE AMERICANS WITH DISABILITIES ACT)**

NOW COMES the Plaintiff, **PAUL SIMKUS** ("Plaintiff"), by and through his attorney, **MICHAEL T. SMITH & ASSOCIATES**, and in complaining of the **UNITED AIRLINES, a wholly owned subsidiary of UAL CORPORATION**, ("Defendant" or "UA"), and states as follows:

NATURE OF ACTION

1. This is an action is brought under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1990, to correct unlawful employment practices on the basis of disability (handicap) and to make the Plaintiff whole. UA discriminated against Plaintiff, a qualified individual with a handicap, because of his disability

JURISDICTION AND VENUE

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C.A. § 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 107(a) of the

Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C.A. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C.A. §§ 2000e-5 (f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C.A. § 1981(A) . The employment practices hereafter alleged to be unlawful were and are now being committed in the Northern District of Illinois, Eastern Division.

3. That Plaintiff is a male citizen of the United States and the State of Illinois, and at all times relevant to this complaint, was a resident of Cook County, Illinois. Plaintiff became employed by UA in 1983 and his position during the relevant times was a Mechanic.
4. That UA is a corporation organized under the laws of the State of Delaware and is in the business of owning and operating an airline with its principal place of business and headquarters located in Chicago, Illinois.
5. That at all times relevant in this complaint, Plaintiff SIMKUS was an "employee" of UA within the meaning of Title VII and the ADA, and was employed as a Building Maintenance Mechanic at UA's offices located at 1200 East Algonquin Road, Elk Grove Village, Illinois 60007 and an employee of Chicago's O'Hare International Airport Chicago Illinois.
6. UA is an employer as that term is defined under the American Disability Act, at all times material to the allegations herein.
7. Plaintiff has a permanent disability Attention Deficit/Hyperactivity Disorder ("ADHD") in that he has a record of, or is regarded as having a physical impairment that substantially limits one or more of his major life activities but said disability is not related to his ability to perform the essential functions of his assigned duties with UA.

STATEMENT OF CLAIMS

8. Despite UA listing itself as an equal employment company and having a policy against discrimination to the disabled, UA intentionally discriminated against Plaintiff by treating him differently than other employees without a handicap by; 1) denying him Long Term Disability benefits; 2) holding him to different terms and conditions of employment and; 3) placing him on a involuntary leave. This discrimination, because of his handicap or disability, violates his rights under both the American Disability Act.

9. UA's acts and omissions to act violate applicable provisions of the American Disability Act as set forth above.

10. The discriminatory action of UA as set forth above had caused Plaintiff to be harmed in that Plaintiff had suffered in his position, his work environment had become impaired and his work performance was impaired. As a further proximate result of UA's unlawful and intentional discriminatory actions against Plaintiff, as alleged above, Plaintiff has been harmed in that Plaintiff has suffered lost income, emotional pain, humiliation, mental anguish, loss of enjoyment of life, and emotional distress. As a result of such discrimination and consequent harm, Plaintiff has suffered such damages in an amount according to proof.

11. Plaintiff has no adequate remedy at law to secure relief. If this court does not enter an order for UA to make whole Plaintiff, Plaintiff will be irreparably injured.

12. Plaintiff protested his unlawful treatment and on December 4, 2012, filed charges of the discrimination herein alleged with the Equal Employment Opportunity Commission at Chicago (EEOC), Illinois. A true and correct copy of the Charge of Discrimination is attached hereto as Exhibit "A" and incorporated herein. Efforts by that agency to obtain

voluntary compliance by the UA with American with Disabilities Act have been unsuccessful thereby causing the EEOC to issue a Notice of Right to Sue letter. A true and correct copy of the Notice of Right to Sue is attached hereto as Exhibit "B" and incorporated herein.

13. This action had been timely filed within ninety (90) days of the receipt of the Notice of Right to Sue

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that the court order such relief as is necessary to make the plaintiff whole, including:

1. Injunctive relief to protect plaintiff from further discrimination by UA;
2. Damages, including loss of pay and benefits;
3. Statutory liquidated damages due to the UA's willful conduct;
4. Attorneys' fees and costs incurred in this action
5. Such other relief as is just and equitable.
6. The plaintiff requests a jury trial of this action.

**AS AND FOR A SECOND CAUSE OF ACTION
(ADA-RETALIATION)**

14. Plaintiff realleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.
15. UA did intentionally retaliated against Plaintiff based; 1) upon filing his requests for Long Term Disability benefits and, then; 2) Plaintiff's persistence to acquire Long Term Disability benefits and; 3) his protected activities in prior cases filed in Federal Court against UA docket number 10 CV 05274 and 11 CV 02165, UA's agents created a hostile

and offensive work environment, by continuing to deny Long Term Disability benefits to Plaintiff, by denying him a contract resigning bonus of \$11,000.00, and placing him on extended leave.

16. By reason of the retaliation of UA, Plaintiff has suffered a loss of earnings and benefits, in addition to suffering great pain, humiliation and mental anguish, all to his damage.

17. Further, said action on the part of the UA was done with malice and reckless disregard for Plaintiff's protected rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. Declare the conduct engaged in by UA to be in violation of Plaintiff's rights;
2. For injunctive relief, including but not limited to relief required to make Plaintiff whole for the losses caused by the violations of UA;
3. For compensatory damages in an amount according to proof;
4. For costs of suit, including reasonable attorney's fees and expert fees, pursuant to 42 U.S.C.A § 12117(a), which incorporates the remedies set forth in the ADA;
5. For such other and further relief as the court deems proper.

AS AND FOR A THIRD COUNT OF ACTION (COMPLAINT FOR INTENTIONAL INFILCTION OF EMOTIONAL) (DISTRESS) PENDENT JURISDICTION

Nature of Action

This is an action under the Illinois law, which involves the some of the same factual basis of Plaintiff's discrimination claims of while employed by UA.

1. This comes under the pendent jurisdiction of the Court since it involves the some

of same operative facts and parties as set forth in Plaintiff's Discrimination claim.

2. Venue is proper as all acts alleged in this complaint occurred within the Northern District of Illinois and because Defendant transacts affairs in this district and the ends of justice require it.

3. Plaintiff realleges each and every allegation set forth above with the same force and effect as if set forth herein for the first time from Counts I and Count II.

4. This is an action intentional infliction of emotional distress ("IIED") due to the alleged retaliatory conduct intentionally acts committed by the defendant with the intent to interfere, delay, delay process, provide false and intentional misleading of information, and or concealment of information all of which represented a serious adverse employment action because that information was critical to the Plaintiff's claim for long term disability "LTD" benefits after being he had filed it with United Airlines on the employee's website "SkyNet" on December 19, 2011.

WHEREFORE, the Plaintiff, Paul Simkus, prays for judgment in his favor and against UA in the sum in excess of \$75,000, for lost wages, attorney fees, and for punitive damages against UA.

PAUL SIMKUS

BY:/s/ Michael T. Smith
Michael T. Smith
Trial Attorney

Michael T. Smith #6180407IL
440 W. Irving Park Road
Roselle, IL 60172
(847) 895-0626

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PAUL SIMKUS,)
)
)
Plaintiff,) **No: 13 CV 7921**
)
)
vs.)
)
)
UNITED AIRLINES, a wholly owned subsidiary of)
UAL CORPORATION,)
)
)
Defendant.) **JURY DEMAND**

PLAINTIFF'S EXHIBIT A

EEOC Form 5 (11/08)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):
 FEPA
 EEOC 440-2013-00760

Illinois Department Of Human Rights

State or local Agency, if any

and EEOC

Name (Indicate Mr., Ms., Mrs.)

Mr. Paul W. Simkus

Home Phone (Incl. Area Code)

(847) 870-0000

Date of Birth

08-17-1964

Street Address

38 N. Belmont Ave.

City, State and ZIP Code

Arlington Heights, IL 60004

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

UNITED AIRLINES

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(773) 601-3703

Street Address

P O Box 66140

City, State and ZIP Code

Chicago, IL 60666

Name

Street Address

City, State and ZIP Code

No. Employees, Members

Phone No. (Include Area Code)

DISCRIMINATION BASED ON (Check appropriate box(es).)

RACE COLOR SEX RELIGION NATIONAL ORIGIN
 RETALIATION AGE DISABILITY GENETIC INFORMATION
 OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

11-21-2012

 CONTINUING ACTION**THE PARTICULARS ARE** (If additional paper is needed, attach extra sheet(s):

I began my employment with Respondent in 1983. My current position is Mechanic. Respondent is aware of my disability. During my employment, I have filed charges and a federal lawsuit alleging discrimination against Respondent. Subsequently, I have been denied Long Term Disability benefits and subjected to different terms and conditions of employment, including, but not limited to, being placed on a leave of absence.

I believe I have been discriminated against because of my disability, and in retaliation for engaging in protected activity, in violation of the Americans with Disabilities Act of 1990, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWEORN TO BEFORE ME THIS DATE
(month, day, year)

Date

Charging Party Signature

11/25/2012 Paul W. Simkus

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PAUL SIMKUS,)	
)	
)	
Plaintiff,)	No: 13 CV 7921
)	
vs.)	
)	
)	
UNITED AIRLINES, a wholly owned subsidiary of UAL CORPORATION,)	
)	
)	
Defendant.)	JURY DEMAND

PLAINTIFF'S EXHIBIT B

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Paul W. Simkus
38 North Belmont Avenue
Arlington Heights, IL 60004

From: Chicago District Office
500 West Madison St
Suite 2000
Chicago, IL 60661



*On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.

EEOC Representative

Telephone No.

440-2013-00760

Gabrielle Perez,
Investigator

(312) 869-8079

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

- NOTICE OF SUIT RIGHTS -
(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

John P. Rowe,
District Director

3/5/13

(Date Mailed)

Enclosures(s)

cc: UNITED AIRLINES